IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GQEBERHA)

Case No: 494/2019

In the matter between:

LONWABO HOBONGWANA **PLAINTIFF**

and

BENTELER SOUTH AFRICA (PTY) LTD **DEFENDANT**

JUDGMENT

BANDS AJ:

[1] Whilst the South African automotive industry is a significant contributor to the country's economy, it, along with many other manufacturing sectors, poses considerable operational risks to the men and women behind the production lines.

[2] The plaintiff is no stranger to these risks, having sustained a lower back injury on the morning of 16 March 2016, at the defendant's automotive manufacturing plant, situated in Kariega ("*the plant*"). The incident took place whilst the plaintiff was operating the rear axle assembly line, colloquially referred to as the SSB line,[1] to which the plaintiff had been moved from the Fagor Press, shortly before the incident occurred. That the plaintiff sustained an injury is not in dispute. It is the cause thereof, on which the parties are not aligned.[2]

[3] In addition to an order issued by agreement on 8 October 2020, in accordance with Uniform Rule 33(4), separating the issue of the defendant's liability

[1] Having been named after the manufacturer of the rear axle assembly line equipment.

[2] The nature and extent of the said injury, together with the seriousness thereof, will stand over for determination as part of the quantum, should this court find that the plaintiff's injury was caused by the wrongful and negligent conduct of the defendant or the defendant's employees, acting in the course and scope of their employment with the defendant.

from the remaining issues in dispute,[3] the parties met the day prior to the commencement of the trial with a view to further limiting the issues, which issues, together with a number of admissions on behalf of the defendant, were recorded in a further pre-trial minute.

[4] Consequently, the issues of negligence and causality are to be tried separately from, and prior to, the remaining issues in the action. In light of the defendant's admission that the defendant had a legal duty to ensure that no persons are to be instructed or permitted to operate machinery and equipment at the plant without first receiving the necessary training and proper instruction on how to use it; should I find causal negligence on behalf of the defendant's employees, wrongfulness will be established and liability on behalf of the defendant will follow. In this judgment, where reference is made to a legal duty, it is made in the context of wrongfulness.

[5] It is common cause that the plaintiff was at all relevant times in the employ of Ulrica and Associates ("*Ulrica*"), which provided labour brokering services to the automotive industry, inclusive of the defendant, at whose plant the plaintiff was assigned. In terms of clause 2.5 of the plaintiff's employment contract with Ulrica, the plaintiff was obliged to "*execute the instructions of" his "Manager/Client conscientiously. Insubordination and hesitation will not be accepted. Failure to do this could lead to disciplinary action being taken against*" the plaintiff.

[6] It is further common cause that the equipment in the plant carried inherent risks of harm to which all users of the machinery were exposed, should the machinery be utilised improperly due to inexperience or lack of training. It is for this reason that all persons, in accordance with the defendant's Safety Standards

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[3] "*1. That the Defendant's First and Second Special Pleas are withdrawn.*
2. That the issues are separated in terms of Uniform Rule 33(4) on the following basis:
2.1. The issues of merits and liability will be decided initially and separately;
2.2. The issues of quantum will be determined as a later date;
2.3. The issues as set out in the paragraphs 26, 26.1 to 26.7, 27. 27.1 to 27.5 of the Plaintiff's particulars of claim read with paragraphs 24 and 25 of the Defendant's Plea will be determined as part of the quantum; and
2.4. All other issues in dispute will be determined as part of the merits and liability.
3. That the trial is postponed sine die.
4. That the Defendant is to pay the wasted costs occasioned by postponement, on a party and party scale as taxed or agreed between the parties."

Handbook, are prohibited from operating the machinery and equipment in the plant unless they have received prior training, which has been documented; alternatively, unless they have received proper instruction.

[7] It is against this backdrop that the legal duty, to which I have referred, arose.

[8] The plaintiff contends that the defendant, and/or the defendant's employees, acting in the course and scope of their employment with the defendant, breached their legal duty towards the plaintiff in one or more of the ways pleaded at paragraph 23 of the plaintiff's particulars of claim, as follows:

"*23.1 They issued and (sic) instruction to the Plaintiff to operate machinery and equipment, without ensuring that the Plaintiff received proper training and/or instruction on how to use the machinery;*

23.2 They failed to adequately supervise the use of the machinery and equipment while the Plaintiff was operating the machinery;

23.3 They failed to ensure that the plaintiff operated the machinery in a controlled and safe environment;

23.4 They failed to observe and carry out the code of conduct as prescribed in the Defendant's safety handbook;

23.5 They insisted that the Plaintiff perform work that required him to do heavy lifting despite receiving medical evidence that due to the Plaintiff (sic) medical condition he should not be required to perform work that required repetitive bending and heavy lifting of parts that weigh more than 5 kilograms."

[9] With reference to paragraph 24 of the plaintiff's particulars of claim, the plaintiff contends that such conduct was negligent in that:

"24.1 At all relevant times they knew or ought to have known that the use of the machinery and equipment carried inherent risk to the safety of the users of the

equipment should the machinery be used improperly through lack of experience and lack of training;

24.2 They failed to heed the protestations by the Plaintiff that he is unable to use the machinery and equipment, had not received the proper training in using the equipment, and that it is accordingly unsafe for him to operate the machinery and equipment;

24.3 They failed to take reasonable steps to prevent the injury to the Plaintiff and to avoid any aggravation of the injury of the Plaintiff in circumstances where they could and should have taken reasonable steps to prevent such harm;

24.4 They failed to take any or adequate and/or reasonable steps to preserve and protect the bodily integrity and physical well-being of the Plaintiff; and

24.5 They failed to prevent the aforementioned injury when by the exercise of reasonable care, they could and should have done so."

[10] Whilst the defendant admits the legal duty as pleaded by the plaintiff, it seeks to disavow liability on the basis that: (i) whilst the machinery and equipment in the plant, carried the inherent risk of harm referred to, all operators engaged to render services to the defendant, including the plaintiff, were fully trained and interchangeable across all lines of production, as is necessary in a production environment; (ii) the defendant's employees at all times provided adequate supervision, having regard to the fact that the plaintiff had been trained to be interchangeable across the defendant's production lines; (iii) the defendant's Safety Standards Handbook was complied with at all relevant times; and (iv) upon being advised of the plaintiff's injury, the defendant took all possible steps to accommodate and assist the plaintiff, including allowing the plaintiff to work in the wash bay for a period of time.

[11] The defendant accordingly denies that its conduct; and/or the conduct of its employees, amounts to negligence. I return to the defendant's pleaded version, with

particular reference to its defence that the plaintiff was fully trained and interchangeable across all lines of production, later.

[12] At this juncture, it is necessary to examine the undisputed evidence in respect of the training provided to new operators at the defendant's plant, and the operation of two specific assembly lines, the Fagor Press[4] and the SSB line, as emerged during the course of the trial, and which feature predominantly in this matter.

[13] Prior to the commencement of an operator's duties at the defendant's plant, induction training is provided, which covers topics such as work safety; fire prevention; health protection; and environmental protection. The information and instructions are of a general nature and include a pre-recorded, 32-minute slide show presentation and a tour of the defendant's plant. Whilst no pre-recorded slide show was available at the time of the plaintiff's induction, the presentation was done utilising the same slides; alternatively, materially the same slides as those contained in the 32-minute presentation and which were presented into evidence. The induction training did not equip operators to operate the machinery on the various production lines, nor did it cover the risks associated therewith.

[14] Accordingly, in addition to the induction training, operators are provided with line specific training, inclusive of training on the inherent risks associated with the operators' specific work areas by the operators' team leader and/or more senior operators, to whom the task of training was delegated. Line specific training takes place by way of on-the-job training whilst shadowing; demonstrating; and operating under supervision. In other words, and by way of illustration, in the event of an operator being stationed at line "X", he or she will receive line specific training in respect of line "X" and not in respect of line "Y". This is in stark contradiction to the defendant's pleaded case that all operators were fully trained to operate all the machinery at the defendant's plant and were accordingly interchangeable across the lines of production.

[4] Referred to as the Fagor Press Shop throughout the evidence.

[15] The Fagor Press is a cold forming line, which utilises pressure to form some 114 different car parts[5] from sheet metal as it travels along a conveyor belt. Two operators are stationed at the end of the conveyor belt and are responsible for quality assurance. Accordingly, as the parts reach the end of the conveyor belt, the operators are responsible for picking them up and inspecting them for irregularities. Once inspected, the large parts are placed on a stand, called a stillage, and the small parts are placed into a bin. Operators working on the Fagor Press are required to move quickly, with approximately 24 small parts; alternatively, 12 large parts, being manufactured per minute. Put differently, new parts are inspected every 2.5 to 5 seconds.

[16] The SSB line is manned by four operators and a team leader, and consists of 3 separate machines, the SSB1 machine; the SSB2 machine; and the SSB3 machine, otherwise known as the auto gauge. Only one part is machined on the line, this being a rear axle, which weighs approximately 20 kilograms. Two operators are stationed at, and work interchangeably between, the SSB1 and SSB2 machines; a third operator is stationed at the auto gauge; and a fourth operator is positioned at the final inspection table. The respective operators are required to manage the aforesaid sequence of machines, which require the manual loading and offloading of the part being machined. A part is taken from the stillage and loaded horizontally into the SSB1 machine by ensuring that two small datum holes at the back of the part, with a diameter of approximately 10 millimetres each, are placed over two taper pins. Once loaded, the operator exits the machine and presses the start button, where after the doors to the machine close. Clamps will engage to ensure that the part does not move whilst the SSB1 machine is in operation. Once the proxies have verified that everything is in place, the part is machined, with the cycle time being approximately 120 seconds. Upon completion of the cycle, the clamps release, and the doors open. If the clamps do not release, the doors of the machine do not open. The operator removes the part from the SSB1 machine and loads it into the SSB2 machine if the latter is available. If not, the part is placed on a stillage and another part is loaded into the SSB1 machine. When the SSB2 machine becomes available, a part is either taken out of the SSB1 machine and placed directly into the SSB2

[5] Such parts were not manufactured simultaneously.

machine or taken from the stillage. Once machined by the SSB2 machine, the part is loaded in the auto gauge. All three machines have cycle times of differing lengths, with the entire process taking approximately five minutes. Once machined, the part is taken to the final inspection table.

[17] I now return to the events of 16 and 17 March 2016, as told by the respective witnesses.

[18] The plaintiff; together with Nelson Lowasi ("*Lowasi*"), who was employed *inter alia* as a Health and Safety representative by the defendant at the time of the incident; testified on behalf of the plaintiff. In addition, the plaintiff presented the evidence of one expert witness, Maretha Waldron ("*Waldron*") a qualified occupational therapist. The defendant in turn led the evidence of four employees of the defendant, being Gerhard Stephanus Wouter Bezuidenhout ("*Bezuidenhout*"), employed in his capacity as shift leader; Mauritia Ogies ("*Ogies*"), who was an operator on the SSB line at the time of the incident in question but now holds the position of team leader; Wessel Franklin Bell ("*Bell*"), who was the team leader on the SSB line and machine setter on 16 March 2016; and Vuyo Makansana ("*Makansana*"), who was also an operator on the SSB line at the relevant time.

[19] The plaintiff testified that on 16 March 2016, he was working the 06h00 to 14h00 shift at the defendant's automotive plant in Kariega, having been assigned there some six months prior, through his employer, Ulrica. It is common cause that on arrival at the plant on the day in question, the plaintiff reported to the Fagor Press, from which he was moved to the SSB line at approximately 08h05 after having been approached by his team leader, Dudu Thembinkosi Daniels ("*Daniels*"), on the instruction of Bezuidenhout. When approached, the plaintiff pointed out to Daniels that he did not know how to operate the machines on the SSB line. He thereafter approached Bezuidenhout and advised him that he had never worked on the SSB line and accordingly, he did not know how it worked. Notwithstanding the aforesaid, Bezuidenhout advised the plaintiff that he was to proceed to the SSB line as there was a shortage of operators on the line and the parts were needed by the defendant's client. The plaintiff thereafter proceeded to the SSB line with Bezuidenhout.

[20] The plaintiff explained that he understood clause 2.5 of his contract with Ulrica to mean that he must execute the reasonable instructions given to him by his manager or supervisor at the defendant's plant, failing which, he would face disciplinary proceedings.

[21] It was put to the plaintiff during cross-examination, firstly, that he did not raise his concerns with Bezuidenhout, and secondly, that in the event that he had done so, he would not have been required to attend upon the SBB line. Despite the aforesaid, the following exchange emerged during the defendant's evidence, as given by Bezuidenhout:

"MS BOSMAN: What happens if some, so if somebody refuses to move what happens then? What if they absolutely refuse to move? They say I am not, I do not want to go, I am either scared or I am unqualified, I do not want to go. How would, I absolutely do not want to go. What do you do then?

MR BEZUIDENHOUT: It is no, you have to find ways to convince that person that he is able to do it. If you really, really cannot, but I will do what I have done with Mr Mankanzana. I will take you to HR. I know I will send him to HR or we cannot force people to do things. I will have to find somebody else.

MS BOSMAN: You will accept, I am assuming that sounds quite threatening to say to someone I will take you to HR. What comment would you have on that?

MR BEZUIDENHOUT: If you, it is normally, it is not a 10 second conversation. Again it is, you explain to the person and you expect of him to be reasonable as it is a reasonable instruction. A (sic) *operator is a production operator. So he can, he must be available to work on every or any work station.*

MS BOSMAN: And if he still despite those threats of reporting him to HR refuse (sic) *to work what or to take, to move to the line what would you do then?*

MR BEZUIDENHOUT: I will most probably give him, I will suspend him with pay and set up an inquiry.

MS BOSMAN: So then what you are saying is somebody who does not want to work on a line is going to face disciplinary charges.

MR BEZUIDENHOUT: Yes. Our rules are very, very clear and the penalty for not following a reasonable and legit instruction is a final written warning or dismissal."

[22] On arriving at the SSB line, Mr Bezuidenhout instructed the team leader on the line, Bell, to demonstrate the operation of the machines to the plaintiff. Following a short demonstration, which lasted five to 6 minutes and was described by the plaintiff as having been given in "*a speedy fashion*", the plaintiff was requested by Bell to operate the SSB line. Once he had completed one round of the operation under the supervision of Bezuidenhout and Bell, the plaintiff was advised to continue operating the machines. He was reminded that the parts were required by the defendant's client, where after Bezuidenhout and Bell left the plaintiff to work on the line, unsupervised. The plaintiff's description as to the demonstration given to him was undisputed. Instead, it was put to the plaintiff that what he had described constituted training and that such demonstration was all that was required on the SSB line due to the simplicity of its operation.

[23] The plaintiff responded by stating that the short demonstration, as described above, could not be referred to as training and that it was not comparable to the training that he had received on the Fagor Press, which took place over a period of two to three weeks from his team leader, Daniels and included training on: (i) the dangers of operating the press and working on the line; (ii) specific safety measures; (iii) the work station as a whole and how to effect tool changes for the various parts; (iv) the respective parts machined by the Fagor Press; and (v) assessment of the quality of the item and how to identify defects in respective parts. He further testified that apart from a lengthy period of demonstration on the Fagor Press, operators were supervised until they were assessed as competent on the line. Whilst the duration of the plaintiff's training, and the extent of the supervision afforded to operators on the Fagor Press was challenged during cross-examination, the

challenge was inconsistent with Bezuidenhout's evidence for the defendant, which was in line with that of the plaintiff. The nature of the training received was undisputed.

[24] Much was made of the difference between the complexity of the two lines and the variance in the time that it takes for an operator to be fully trained on the respective lines. Whilst this is certainly so, Bezuidenhout, in describing the line specific training on a new line, explained that the operator will be shadowed by the team leader; alternatively, an experience operator, until such time that the operator "*is into his rhythm*". He stated that the process starts slowly and that, depending on the complexity of the line, it can take up to eight hours to be considered competent. Implicit in Bezuidenhout's answer was that the operator would be shadowed until such time that he was considered to be competent. In respect of the training on the SSB line, Bezuidenhout testified that:

"*Typically, what will happen one of the, a person that can do the training he will tell him what to do. He will show him what to do. In this case the most important is the alignment of the holes to the taper pins, how to load it, what button to press to start it and what to do with the off-loading, how to off-load it and he will gradually give him a chance to do that.*"

[25] Two aspects are of significance. Firstly, the importance of having an understanding as to the proper working of the machines which goes beyond a mere peripheral understanding; and secondly, the nature of the training that was required, same being gradual and not rushed.

[26] Although the standard operating procedures in respect of the SSB line were tendered into evidence, the plaintiff testified that he had never seen them nor had his attention been directed to them, up until the day before the commencement of the trial. This too was undisputed.

[27] The plaintiff testified that whilst working on the line, he attempted to remove a part from one of the machines when it suddenly became jammed. What to do, when confronted with this situation, had never been explained to him. Given his

impression that the operation of the machines was time sensitive, due to his understanding as to how they worked, and the urgency pertaining to the needs of the client, the plaintiff testified that he had to rush to take the part out of the machine. He applied increased upward force to the part, which suddenly came loose and landed on his chest. His back immediately went into a spasm and he cried out for assistance. Two operators, working at other stations on the SSB line, came to the plaintiff's assistance and took the part from him. It was put to the plaintiff in cross-examination that his version as to how he sustained the injury could not be reasonably possibly true, and instead, what had happened was that the plaintiff had picked up a part from the stillage; alternatively, from the SSB1 machine and that when he approached the SSB2 machine, the part wobbled in his hands and the plaintiff slipped or stumbled whereafter he complained that he had injured his back. I pause to mention that such version is absent on the defendant's pleadings, in which the defendant denies that the plaintiff's injury was as a result of the plaintiff having operated the machinery.

[28] The plaintiff testified that the operators who had assisted him by taking the part from him, later explained that the rear axle was held in place by clamps and that this was possibly the cause of the plaintiff's difficulty in removing the part. This was nothing more than speculation and, as foreshadowed above, it later emerged in the evidence that this could not have been the cause of the part not releasing, given that the doors of the SSB machine will not open until such time as the clamps have released. Nothing turns on this.

[29] Bezuidenhout described three circumstances under which a part can become jammed, two of which do not support the plaintiff's case in that in both instances, such circumstances would result in a serious of parts all suffering the same fate, which did not happen in the present instance. Lastly, he explained that if the part is not positioned correctly when loaded, or if the operator attempts to lift the part in any manner other than directly horizontally, there will be difficulty in removing the part due to the jamming of the taper pins in their respective holes. Simply put, if you attempt to lift a part out of the machine at a slight angle, it can temporarily become jammed. In such circumstances, the operator is required to put the part down and

take a second attempt at removing the part. That the plaintiff was not advised of such risk or the manner in which to overcome it, was undisputed.

[30] The plaintiff demonstrated to the court how his injury occurred. He indicated that the rear axle was below his waist level, approximately midway between his knee and waist. He bent over, his palms were facing upwards, and he applied increased force in an upward direction with his elbows facing downwards. As the part released, and given the direction of the force applied, his arms bent at the elbow and moved in what can best be described as "*a double bicep*" motion, with the part landing up against the plaintiff's chest, positioned just beneath his clavicles. The plaintiff was unable to state with certainty as to which machine he was operating at the time of his injury but he explained that it was the machine which has doors which open and close. He estimates that the injury occurred at approximately 08h15 and 08h20 in the morning. Mr Bell was called, who in turn advised that the plaintiff be taken to the safety officer, Louis Brophy ("*Brophy*"). The plaintiff explained that he walked to Brophy's office like a "*crippled*" person. His back was in pain; his legs were shaking; and he could not walk without assistance. It is undisputed that the plaintiff's injury occurred shortly after having joined the SSB line, and more particularly, that same had occurred within ten to fifteen minutes of his arrival.

[31] The plaintiff explained to Brophy what had transpired, and he was taken to the company clinic, where Brophy treated him by administering a spray to his lower back and analgesics. Brophy advised the plaintiff that he would fill out the necessary paperwork (the content of which the plaintiff had no knowledge) and that an ambulance would be called. In the interim, he was instructed to return the SSB line to assist at the inspection table, with the caveat that he was not to pick up any parts. The plaintiff, despite the pain that he was in, returned to the SSB line, at what he estimates to have been 09h00.

[32] Later during the plaintiff's shift, and due to the unbearable pain that he was in, he requested the assistance from another operator who called the shop steward, Lowasi. This was consistent with the evidence of Lowasi, who further testified that on approaching Brophy, he was advised that they had not yet completed the necessary paperwork in that they were awaiting certain information. The plaintiff

enquired from Brophy whether he could be released to be examined by his doctor, which request was denied on the basis that should he leave the workplace, the incident would not be classified as an injury on duty. He was told that he would need to continue with his shift, whereafter he would be free to leave. The plaintiff remained at the plant until the end of his shift, which was confirmed with reference to his time sheet of 16 March 2016, whereafter he immediately left and attended upon his doctor. Lowasi's evidence pertaining to the plaintiff's condition both at the plant and in the taxi following their shift, corroborated that of the plaintiff.

[33] The following day, the plaintiff proceeded to his workplace and called upon the occupational nurse. It is not in dispute that the nurse noted swelling on the plaintiff's back as a consequence of his injury and that an ambulance was called.

[34] The only expert evidence tendered at trial was that of the plaintiff's expert witnesses, Waldron, who as previously stated is a qualified occupational therapist. Whilst two reports were prepared by Waldron, given the lateness of the filing of the second report, it was agreed between the parties, to avoid a possible postponement of the matter, that the plaintiff's reliance on the reports would be restricted to Waldron's first report, filed in August 2021; and her observations as to the operation of the SSB line at the defendant's plant over the course of 45 minutes, as contained in her second report, filed on 14 June 2022. Accordingly, no reliance would be placed on the risk analysis performed by Waldron as contained in her second report.

[35] Whilst the relevance of Waldron's expertise, in the context of the present dispute, was initially placed in issue during evidence, it soon became apparent that she was more than sufficiently qualified with regards to the issues which she was asked to determine and the evidence which she tendered. In short, she has 25 years' clinical experience with muscular and skeletal condition management; and the assessment and treatment of clients both in the private sector and in respect of injury on duty services. More particularly, she has extensive experience within the automotive industry, with specific reference to injuries sustained on duty, inclusive of the assessment of such injuries and functional capacity evaluations. As part of such assessments, she is required to determine whether an injury sustained by an

employee is consistent with the mechanisms of the injuries, as described by the employee.

[36] Waldron's functional capacity evaluation results indicate that the plaintiff presented with a form of lower back injury that significantly impacted his functional ability in everyday life as well as his vocational environment. The exact nature and extent of the injury, as well as the seriousness thereof, is not for this court to determine.

[37] With reference to the mechanism of the plaintiff's injury, Waldon stated as follows:

"*My opinion is that it is a classic lower back injury. So his explanation of how he was trying to lift something and then it wouldn't come loose and he had to continue to exert force through his arms, through his lower back to try and lift this part that would not come loose, and then that sudden lift of a heavy part would then cause disproportionate force onto his back and onto his arms and that explanation of how he presented with the mechanism of the injury is absolutely in line with what I would expect.*"

[38] Insofar as Waldron's key observations at the defendant's plant is concerned, she noted as follows:

"… so when I was observing, the key thing that really stood out to me during the visit of the plant was that getting stuck… I observed how when the operator is lifting the part, it's a really complex precision placement part which required four precision placements of a 20 kilogram part. So the first two placements are at further back which just slots in and then there's two datum holes which basically just a little hole and then the location pin where the part needs to slot in to enable the part to be secure during the machining. So that is in addition to the clamps that move onto the part to ensure that the part is secure whilst the machining happens. And it was very evident to me that when the operators are lifting that part, the part needs to be lifted in a symmetrical, vertical and horizontal manner to allow that datum hole and the location pin to not present with an increased sheer force. So the moment the

operators lifts that part with a slight angle, the part becomes stuck, becomes tight and then the more that you lift at that angle that sheer force significantly increases. So that was my observation. And what I observed was that operators that seemed to have worked at the station for longer would just tilt their hands, just tilt their hands to just reduce that sheer force and then lift the part up. But with an unexperienced operator what was observed was they would lift it and then that being stuck made sense to me. So his indication that something was stuck, that was my observation that could possibly have been the reason why the part did not initially come free or lift it smoothly and then the sudden force when it does then become free. When that sheer force that you're applying actually you know breaks through the sheer force of the two parts working on each other."

[39] The main thrust of Waldron's cross-examination pertained to the facts upon which she had based her opinion and aimed to distance the defendant from liability due to a defect in the SSB line, for example due to the clamps not releasing. Whilst the fact that no defect existed was conceded by Waldron, this in no manner altered Waldron's key observations and opinion, on which the defendant led no evidence to gainsay. She testified that whilst at the time of her first report, and prior to her attendance at the defendant's plant, she was advised by the plaintiff that he was under the impression that the clamps were the reason for the part not having released, the fact that there was another cause for this phenomenon, did not, and does not change her opinion on the mechanism of the injury, it simply changed the reason for its failure to release.

[40] The evidence of Bezuidenhout, for the defendant, was led primarily to (i) establish the training methods utilised by the defendant; (ii) provide an overview of the operation of the various production lines; and (iii) give an account of the events which transpired on 16 and 17 March 2017. The pertinent aspects of Bezuidenhout's evidence relating to (i) and (ii) have been referred to above. Given two tragic events, which took place in Bezuidenhout's life, both of which appear from the record of proceedings, but which serve no purpose to detail herein, he has no independent recollection of the events of 16 and 17 March 2016. Notwithstanding the aforesaid, he was directed to an incident report, which had been completed by him on 17 March 2016 in respect of the incident in question. He was able to confirm

that the completion of the report was his responsibility and that the signature appearing *ex facie* the document, was his.

[41] Apparent from section D8 of the form is the following recordal:

Preventative Action	*Responsibility*	*Date of completion*	*Check of efficiency*
Trainee operators to observe for a longer period	*Teams Leaders*	*Ongoing*	

[42] The primary purpose of Ogies' evidence was to provide information regarding the training received on the SSB line as well as to provide an eye-witness account of the incident in question. The credibility of Ogies' evidence was called into question, and on the whole, I found her to be an unimpressive witness. After presenting evidence that a trainee operator on the SSB line must be shown between five and ten cycles prior to being required to do the work physically, she testified that it took her no more than fifteen minutes to be trained on the line. Given the uncontested evidence that the machine cycle time is approximately five to six minutes, this would effectively mean that Ogies' entire training on the line, inclusive of demonstrations and shadowing, consisted of no more than 2.5 cycles at most. Not only does this not accord with the probabilities, but it is in stark contradiction to common cause facts in respect of the defendant's training procedures.

[43] Insofar as the plaintiff's training is concerned, she testified that prior to the start of his training, the standard operating procedures were explained to him. This too does not accord with the common cause facts.

[44] She further gave evidence that at the time of the incident, the plaintiff had observed between five and ten cycles, whereafter the plaintiff performed three to four cycles himself, under the supervision of Makansana. At that juncture, Ogies maintained that she was standing in front of the auto gauge and not at the inspection

table as no parts were ready for inspection. Accordingly, she was able to see the training provided to the plaintiff and the manner in which his injury was sustained.

[45] Notwithstanding her evidence that the line had completed the aforesaid number cycles, which in itself does not accord with the probabilities given the common cause evidence pertaining to (i) the length of a cycle; and (ii) the fact that the plaintiff had only been on the line for ten to fifteen minutes prior to his injury, this version later vacillated when she was questioned as to how it was then possible that no parts were ready for inspection. Her evidence was thereafter tailored to suit her narrative by stating that only the SSB1 machine was in operation at the time and that no other machines on the line were running. She was later forced to concede that at the time of the plaintiff's injury, Makansana was operating the SSB2 machine.

[46] Insofar as the incident itself is concerned, Ogies testified that she witnessed the plaintiff taking a part out of the SSB1 machine when he stumbled and tripped. He thereafter called for Makansana to assist him. Makansana took the part from the plaintiff, which part was in the plaintiff's hands and not held against his chest. Contrary to this, Makansana testified that at the time of the plaintiff's injury, the part was still in the machine and accordingly, he did not take the part from the plaintiff.

[47] Bell testified that his recollection of 16 March 2016 was poor. He had no independent recollection of the training provided to the plaintiff other than to recall that he had requested Makansana to assist him, whereafter he left the SSB line. He was not present on the line at the time of the plaintiff's injury.

[48] Makansana testified that in general, an operator is shown how to work on the line for approximately five to ten cycles whereafter the trainee operator is required to demonstrate his ability to operate the machines in the presence of the trainer. He must be guided for approximately two to three hours until he is competent on the line, during which time he cannot be left alone. He stated that this process cannot be done in ten minutes and that at times it could take up to two to three days depending on the person in question.

[49] He further testified that he did not witness the plaintiff's injury as he was in the SSB2 machine at the relevant time. He accordingly conceded that he was not supervising the plaintiff.

[50] He made the following material concessions: (i) that the plaintiff had protested to working on the line given his lack of training; (ii) given the urgency to deliver the parts in question, there was no further time to train the plaintiff as he was required to continue with his own duties; (iii) following the demonstration to the plaintiff, the plaintiff was not supervised; (iv) high production demands were not ideal for on the job training; (v) that where a part does not release freely, there was a particular lifting technique which needed to be adopted to ensure that the part can be removed; and (vi) that such different lifting techniques were not demonstrated or described to the plaintiff and accordingly he would not have known what to do in the event of a part getting stuck.

[51] In respect of the plaintiff's witnesses, the plaintiff; Lowasi and Waldron came across as honest witnesses. Their evidence was probable; reliable; and credible in all material respects. So too was the evidence of Bezuidenhout in respect of the general issues on which he was able to testify. That Bezuidenhout's evidence accorded materially with that of the plaintiff, is one of various factors which count strongly in favour of the plaintiff's credibility and reliability. Other such factors include: (i) the plaintiff's candour in demeanour in the witness box, which could not be faulted; (ii) the plaintiff's rudimentary explanation of how the SSB line operated; (iii) his impression that the line was time sensitive; (iv) his lack of knowledge as to the function of the clamps, proxies, datum holes, taper pins and precision placements; (v) his lack of knowledge as to the inherent risks involved in the operation of the line; and (vi) his lack of knowledge as to the potential problems that can arise on the line and how to navigate such problems, all of which I accept and are indicative of his lack of training on the line.

[52] Ogies on the other hand struck me as an unreliable witness. The contradictions between her evidence and that of the other witnesses, as well as the common cause facts; and the inherent contradictions and inconsistencies in her own

evidence are numerous, and in many respects, material. She was neither a credible witness nor was her evidence probable for the reasons set out above.

[53] Whilst Makansana came across as a credible witness, his evidence that the part remained in the SSB1 machine at the time of the plaintiff's injury was at odds with the plaintiff's evidence and does not accord with the probabilities. Having said that, the numerous concessions made by him during the course of cross-examination are of a material nature and accord with the probabilities.

[54] In considering the approach to be adopted in evaluating the probability of irreconcilable versions, I have had regard to the principles set out in *Stellenbosch Farmers' Winery Group Ltd & Another v Martell & Cie SA & Others*.[6] For the reasons stated, I am satisfied on a balance of probabilities that the plaintiff was telling the truth and that his version was acceptable. I accordingly accept the plaintiff's version.

[55] Quite correctly, Ms Bosman, on behalf of the defendant, contended in argument that the validity of Waldron's conclusions, insofar as they relate to factual issues, are to stand and fall on the credibility of the plaintiff, he being the only witness on behalf of the plaintiff who gave an account of the incident in support of his case. It is trite that it is the court's task to determine issues of fact and not the task of an expert witness. The function of an expert witness cannot arrogate that of the judicial officer.[7] Waldron's key function, as an expert witness, was to guide this court in its decision-making process on questions, which fall within the ambit of her specialised field of knowledge.[8]

[56] Having determined the issues of fact relevant to the dispute, I am satisfied that the opinion evidence of Waldron was clear, well-reasoned; logical; and consistent with such facts. I have dealt with the sufficiency of her qualifications above.

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[6] [2002] JOL 10175 (SCA).
[7] *Twine and Another v Naidoo and Another* [2018] 1 All SA 297 (GJ) at para 18k.
[8] *The Member of the Executive Council for Health, Eastern Cape v MM obo ELM* (*supra*) at para 11; *Van Wyk v Lewis* 1924 AD 438 at 477; *S v Gouws* 1967 (4) SA 527 (E) at 528D-F.

[57] The test for negligence formulated by Holmes JA in *Kruger v Coetzee*[9] has been restated countless times by our courts and informs that negligence will be established if:

"(a) a diligens paterfamilias the position of the defendant:

(i)would foresee the reasonable possibility of his conduct injuring another person or property and causing him patrimonial loss; and

(ii)would take reasonable steps to guard against such occurrence; and

(b)the defendant failed to take such steps."

[58] As previously set out, the defendant admitted that the machinery and equipment in the defendant's plant carried inherent risks of harm to which all users of the machines were exposed to should they be used improperly through inexperience or lack of training. The defendant further admitted that it had a legal duty to ensure that no persons are instructed or permitted to operate the machinery and equipment without first having received the necessary training and proper instruction on how to use it. It cannot be gainsaid that part (a) of the test in *Kruger v Coetzee* has been established.

[59] Given that the legal duty is admitted by the defendant, as in many other delict cases, causal negligence remains to be determined. In other words, in the context of the present matter, it remains to be determined whether the defendant took reasonable steps to guard against the dangers inherent in operating the SSB line to which the plaintiff had been directed to operate on the morning of 16 March 2016, and more particularly, whether the training provided to the plaintiff was sufficient to discharge the defendant's legal duty.

[9] 1966 (2) SA 428 (A) at 430E-H.

[60] In determining whether the steps are reasonable in the circumstances is dependant upon the facts of the matter at hand. The court in *Ngubane v South African Transport Services*, stated as follows:[10]

"Once it is established that a reasonable man would have foreseen the possibility of harm, the question arises whether he would have taken measures to prevent the occurrence of the foreseeable harm. The answer depends on the circumstances of the case. There are, however, four basic considerations in each case which influence the reaction of the reasonable man in a situation posing a foreseeable risk of harm to others: (a) the degree or extent of the risk created by the actor's conduct; (b) the gravity of the possible consequences if the risk of harm materialises; (c) the utility of the actor's conduct; and (d) the burden of eliminating the risk of harm."

[61] In answering the question in the context of the present matter and having regard to the body of the evidence, the answer, must of necessity, be no.

[62] I have dealt with the evidence in significant detail above. For the reasons stated, the defendant's pleaded version that all operators engaged to render services to the defendant, including the plaintiff, were fully trained and interchangeable across all lines of production must be dismissed out of hand. Moreover, the ten to fifteen minute instruction received by the plaintiff on the SSB line was wholly insufficient to properly equip the plaintiff to operate the SSB line unsupervised and fell far short of what was required in the circumstances as established on the facts.

[63] Taking into account the factors set out in *Ngubane v South African Transport Services*, I am satisfied that the defendant failed to provide the plaintiff with sufficient training and instruction on the SSB line, which is required by company policy, prior to issuing an instruction to him to operate the line. I am further satisfied that the plaintiff was: (i) afforded insufficient supervision on the line; (ii) that the defendant failed to ensure that the plaintiff operated the machinery in a safe and controlled manner; and (iii) failed to take reasonable steps to preserve and protect the bodily integrity and

[10] [1990] ZASCA 148; 1991 (1) SA 756 (A) at 776 E-1

physical well-being of the plaintiff. Accordingly, the defendant, by way of the aforesaid failures, failed to take reasonable steps to guard against the inherent dangers in operating the SSB line, which it should and could have done so in the circumstances.

[64] I am accordingly satisfied that the plaintiff has proven negligence on behalf of the defendant.

[65] It is trite that a successful delictual claim entails proof of a causal link between the defendant's actions or omissions, on the one hand, and the harm suffered on the other hand. Accordingly, what remains to be determined are the issues of factual and legal causation.

[66] Insofar as factual causation is concerned, I am required to apply the well-established and accepted "*but for*" test for factual causality,[11] otherwise known as the *sine qua non* test. In determining the causal link it falls to be determined whether the plaintiff would have sustained an injury but for the negligence on behalf of the defendant. Had the plaintiff been afforded proper training, instruction and supervision on the SSB line, it goes without saying that not only would he have had a better appreciation of the working of the machines on the SSB line, but he would have been aware of the inherent risks involved in the operation thereof. More particularly, the plaintiff would have known that the operation of the machines was (i) not time sensitive; (ii) that the parts required precision placement due to the datum holes and taper pins; (iii) that the parts needs to be lifted in a symmetrical, vertical and horizontal manner to allow that datum hole and the location pin to not present with an increased sheer force; (iv) and that should the latter not be done, the operator was required to adjust his lifting technique and take a second attempt. Accordingly, but for the negligence on behalf of the defendant, I am satisfied that the plaintiff would not have sustained the injury with which he presented. Insofar as legal causation is concerned, I am satisfied that the harm to the plaintiff was foreseeable and that the defendant's conduct is sufficiently closely linked thereto.

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[11] *NTH v MEC for Health, Gauteng Province* (57301/15) [2021] ZAGPPHC 208 (8 February 2021); *International Shipping Co (Pty) Ltd v Bentley 1990 (1) SA 680 (AD) at 700F-I; Simon & Co (Pty) Ltd v Barclays National Bank Ltd 1984 (2) SA 888 (AD) at 915B-H; Minister of Police v Skosana 1977 (1) SA 31 (AD) at 35C-F).*

[67] Having found in favour of the plaintiff, I see no reason to depart from the usual order of costs.

[68] In the premises, the following order shall issue:

1. It is declared that the defendant is liable for such damages as might be agreed upon or proved in consequence of the event that is the subject of this claim.

2. The defendant is ordered to pay the costs of the hearing of the issues already determined in this judgment, such costs to include the qualifying fees of Ms Maretha Waldron.

I BANDS
ACTING JUDGE OF THE HIGH COURT

Heard:	16 to 18 February 2022; 20 to 24 June 2022; 26 and 27 September 2022
Delivered:	6 February 2023

Appearances:

For the Plaintiff:	Adv G Appels
Instructed by:	Lessing, Heyns & Van Der Bank Attorneys Inc. 7 Bird Street, Central.
For the Defendant	Adv Bosman
Instructed by:	DLA Piper South Africa RF Inc. c/o Joubert Galpin & Searle 173 Cape Road, Mill Park

This judgment was handed down electronically by circulation to the parties' legal representatives by email on 6 February 2023. The date and time for delivery is deemed to be 15h00 on 6 February 2023.